

PETER TREVINO, JR.,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-93-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 21, 1995

On August 1, 1995, the Board of Indian Appeals (Board) affirmed a March 10, 1995, decision of the Anadarko Area Director, Bureau of Indian Affairs (Area Director), which revoked two Certificates of Eligibility for Indian Allotment on Public Domain Land which had previously been issued to appellant and to his grandmother, Hilaria Olivarria Lopez. 28 IBIA 129. The Board found that appellant had failed to carry his burden of showing error in the Area Director's decision because his notice of appeal, the only filing the Board received from appellant, did not state why he believed the decision was in error.

Appellant filed a petition for reconsideration, stating that he had timely sent an opening brief to the Board. Appellant attached a copy of a brief, dated May 23, 1995, to his petition, and stated that he had mailed the brief to the Board at its correct mailing address. The copy of the brief sent to the Board does not show service on any interested party.

In Miami Tribe of Oklahoma v. Muskogee Area Director, 27 IBIA 153 (1995), the Board held that a mere contention that an appellant mailed a brief to the Board by regular mail was insufficient to show that the brief was timely filed. Appellant falls squarely under the holding in Miami. 1/

1/ Even if the Board were to consider appellant's filing, appellant would not prevail in this appeal. 43 CFR 2531.1(a) provides that a certificate of eligibility for public domain allotment may be issued only to "a recognized member of an Indian tribe or [to a person who] is entitled to be so recognized."

There is no evidence that Lopez was a member of the Comanche Tribe. In fact, her 1978 application for tribal membership was denied. Furthermore, the revocation of her certificate is moot because she is deceased.

In filings before the Area Director, appellant stated that the certificates were the documents "that clearly state[d] me and my grandmother are Indians of the Comanche Tribe" (Nov. 7, 1994, Statement of Reasons at 1). The certificates cannot establish tribal membership; an individual must be a member of a tribe in order to be eligible to receive a certificate. Appellant's brief does not show that he is eligible for a certificate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellant's petition for reconsideration is denied.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge